UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

KYLE ABRAN GARCIA, Plaintiff, v. KEN FURLONG, *et al.*, Defendants.	Case No. 3:21-cv-00421-MMD-CSD ORDER

Plaintiff Kyle Abran Garcia brings this civil-rights action under 42 U.S.C. § 1983. (ECF No. 1-1.) Before the Court is the Report and Recommendation of United States Magistrate Judge Craig S. Denney recommending the Court dismiss this case without prejudice because Garcia failed to timely file an amended complaint per the Court's prior order. (ECF No. 12 ("R&R").)[1] Garcia did not file an objection to the R&R though the deadline for doing so has passed. As further explained below, the Court will dismiss this case without prejudice.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831

[1]The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party fails to object to a magistrate judge's recommendation, the Court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) ("De novo review of the magistrate judges' findings and recommendations is required if, but only if, one or both parties file objections to the findings and recommendations.") (emphasis in original); Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (providing that the Court "need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."). Because Garcia did not object to the R&R, the Court is not required to conduct de novo review and is satisfied that Judge Denney did not clearly err.

(9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

The first two factors, the public's interest in expeditiously resolving this litigation and the Court's interest in managing its docket, weigh in favor of dismissal of Garcia's claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

The fifth factor requires the Court to consider whether less drastic alternatives can be used to correct the party's failure that brought about the Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that "the persuasive force of" earlier Ninth Circuit cases that "implicitly accepted pursuit of last drastic alternatives prior to disobedience of the court's order as satisfying this element[,]" *i.e.*, like the "initial granting of leave to amend coupled with the warning of dismissal for failure to comply[,]" have been "eroded" by *Yourish*). Courts "need not exhaust every sanction short of dismissal before finally dismissing a

case, but must explore possible and meaningful alternatives." *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed if Garcia continues not to comply with the Court's orders, the only alternative is to enter an additional order setting another deadline. But without any sign that Garcia intends to file an amended complaint and seek leave to excuse his noncompliance with the Court's prior order, issuing yet another order requiring compliance will only delay the inevitable and further squander the Court's finite resources. Setting another deadline is not a meaningful alternative given these circumstances. So the fifth factor favors dismissal.

Having thoroughly considered these dismissal factors, the Court finds that they weigh in favor of dismissal.

It is therefore ordered that this action is dismissed in its entirety without prejudice based on Garcia's failure to file an amended complaint in compliance with this Court's January 5, 2022, order.

It is further ordered that the Report and Recommendation of United States Magistrate Judge Craig S. Denney (ECF No. 12) is accepted and adopted in full.

The Clerk of Court is directed to enter judgment accordingly and close this case.

It is further ordered that no other documents may be filed in this now-closed case. If Garcia wishes to pursue his claims, he must file a complaint in a new case and provide the Court with his current address.

DATED THIS 21st Day of March 2022.

MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE